

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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DAVID LUINA, individually and on behalf of all  
Others similarly-situated,

Plaintiffs

vs.

L3 FUNDING LLC, VICTOR RODRIGUEZ,  
KRIS BLAKU, and JOHN and JANE DOES 1-50

Defendants.

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)  
) CIVIL ACTION  
)

) 1:18-CV-11208-VSB  
)

) **ANSWER TO**  
) **COMPLAINT**  
)

Defendants, by and through their attorney, upon information and belief as to the matter by way of Answer to the Complaint of the Plaintiffs says as follows:

**NATURE OF THE CLAIMS**

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 1.

2. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 2.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 3.

**JURISDICTION AND VENUE**

4. Defendants admit the allegations contained in Paragraph 4.

5. Defendants admit the allegations contained in Paragraph 5.

6. Defendants admit the allegations contained in Paragraph 6.

**PARTIES**

7. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 7 except Defendants deny that the Plaintiff was a "non-exempt employee."

8. Defendants admit the allegations contained in Paragraph 8 except that Defendants deny that Defendants was an "employer" within the meaning of FLSA, NYLL, NYCRR, and all other applicable rules and regulations.

9. Defendants deny the allegations contained in Paragraph 9.

10. Defendants deny the allegations contained in Paragraph 10.

11. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 11.

**COLLECTIVE ACTION ALLEGATION**

12. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 12.

13. Defendants deny the allegations contained in Paragraph 13.

14. Defendants deny the allegations contained in Paragraph 14.

15. Defendants deny the allegations contained in Paragraph 15.

16. Defendants deny the allegations contained in Paragraph 16.

17. Defendants deny the allegations contained in Paragraph 17.

18. Defendants deny the allegations contained in Paragraph 18.

19. Defendants deny the allegations contained in Paragraph 19.

**CLASS ACTION ALLEGATIONS**

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 1.
2. Defendants deny the allegations contained in Paragraph 2.
3. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 3.
4. Defendants deny the allegations contained in Paragraph 4.
5. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 5.
6. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 6.
7. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 7.
8. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 8.
9. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 9.
10. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 10.
11. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 11.
12. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 12.

**INDIVIDUAL FACTUAL ALLEGATIONS**

**Plaintiff David Luina**

13. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 13.

14. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 14.

15. Defendants deny the allegations in Paragraph 15.

16. Defendants deny the allegations in Paragraph 16.

17. Defendants deny the allegations in Paragraph 17.

18. Defendants deny the allegations in Paragraph 18.

19. Defendants deny the allegations in Paragraph 19.

20. Defendants deny the allegations in Paragraph 20.

21. Defendants deny the allegations in Paragraph 21.

22. Defendants deny the allegations in Paragraph 22.

**FIRST CAUSE OF ACTION**

**(FLSA: UNPAID MINIMUM WAGE)**

23. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 23.

24. Defendants deny the allegations in Paragraph 24.

25. Defendants deny the allegations in Paragraph 25.

26. Defendants deny the allegations in Paragraph 26.

27. Defendants deny the allegations in Paragraph 27.

**SECOND CAUSE OF ACTION**

**(FLSA: FAILURE TO PAY OVERTIME COMPENSATION)**

28. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 28.

29. Defendants deny the allegations in Paragraph 29.

30. Defendants deny the allegations in Paragraph 30.

31. Defendants deny the allegations in Paragraph 31.

32. Defendants deny the allegations in Paragraph 32.

33. Defendants deny the allegations in Paragraph 33.

**THIRD CAUSE OF ACTION**

**(NYLL & NYCRR: UNPAID MINIMUM WAGE)**

34. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 34.

35. Defendants deny the allegations in Paragraph 35.

36. Defendants deny the allegations in Paragraph 36.

37. Defendants deny the allegations in Paragraph 37.

38. Defendants deny the allegations in Paragraph 38.

**FOURTH CAUSE OF ACTION**

**(NYLL & NYCRR: FAILURE TO PAY OVERTIME COMPENSATION)**

39. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 39.

40. Defendants deny the allegations in Paragraph 40.

41. Defendants deny the allegations in Paragraph 41.

42. Defendants deny the allegations in Paragraph 42.

43. Defendants deny the allegations in Paragraph 43.

**FIFTH CAUSE OF ACTION**

**(NYLL: FAILURE TO FURNISH WAGE NOTICES)**

44. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 44.

45. Defendants deny the allegations in Paragraph 45.

46. Defendants deny the allegations in Paragraph 46.

47. Defendants deny the allegations in Paragraph 47.

**SIXTH CAUSE OF ACTION**

**(NYLL: FAILURE TO FURNISH WAGE STATEMENTS)**

48. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 48.

49. Defendants deny the allegations in Paragraph 49.

50. Defendants deny the allegations in Paragraph 50.

51. Defendants deny the allegations in Paragraph 51.

**SEVEN CAUSE OF ACTION**

**(12 NYCRR 142-2.3: SPREAD OF HOURS PAY)**

51. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 51.

52. Defendants deny the allegations in Paragraph 52.

53. Defendants deny the allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.60

55. Defendants deny the allegations in Paragraph 55.
56. Defendants deny the allegations in Paragraph 56.
57. Defendants deny the allegations in Paragraph 57.
58. Defendants deny the allegations in Paragraph 58.
59. Defendants deny the allegations in Paragraph 59.
60. Defendants deny the allegations in Paragraph 60.

**EIGHT CAUSE OF ACTION**

**(NYLL and NYCRR: UNLAWFUL DEDUCTIONS)**

61. Defendants are without knowledge or information sufficient to form a belief as to the truth of Plaintiffs' allegations as to Paragraph 61.

62. Defendants deny the allegations in Paragraph 62.
63. Defendants deny the allegations in Paragraph 63.
64. Defendants deny the allegations in Paragraph 64.

**WHEREFORE**, Defendants demand judgment dismissing the Plaintiffs' Complaint in its entirety together with costs of suit, attorney fees, and any other relief as the Court may deem just and proper.

**AFFIRMATIVE DEFENSES AS TO ALL COUNTS**

1. Failure to state a claim upon which relief can be granted
2. Lack of Standing
3. Lack of Consideration
4. Waiver
5. Lack of Privity
6. Laches

7. Not a Real Party in Interest
8. Assumption of Risk
9. Unjust Enrichment
10. Any and all damages sustained by the Plaintiffs is the results of their own risk and cause.
11. Any and all damages sustained by the Plaintiffs is NOT the results of Defendant.
12. Plaintiff failed to mitigate damages.
13. Delay
14. Estoppel
15. Acquiescence
16. Excuse
17. Ratification
18. Unclean Hands
19. Plaintiffs are not employees and are not entitled overtime. Plaintiffs are independent contractors.
20. Defendant reserves the right to assert any additional defenses that may become apparent during the case.

**WHEREFORE**, Defendants demand judgment dismissing the Plaintiffs' Complaint its entirety together costs of suit, attorney fees, and any other relief as the Court may deem just and proper.

Dated:

2.8.19



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